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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5722 OF 2004

Vita Merchant Co-op.Bank Ltd.
and others ... Petitioners

versus

Raman Gulab Tamboli & others ... Respondents

Mr.S.S.Patwardhan for petitioners.
Ms.Mhaispurkar, AGP for respondents 5 and 6.
Mr.V.B.Rajure for respondents 1 and 2.

CORAM : A.S.OKA, J.

DATE : 18th June 2007

PC :

1. Heard learned advocate for the petitioners and learned advocate for first and second respondents. The first and second respondents are the only contesting respondents as the order impugned has been passed on a revision application preferred by the said respondents.

2. In view of order dated 29th September 2005 passed by this Court, the writ petition is taken up for final disposal at the admission stage.

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3. The petitioner applied for grant of a Certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the said Act"). On 21st May 1997, the Assistant Registrar of Co-operative Societies issued a Recovery Certificate in favour of the petitioners against first to fourth respondents herein. The first and second respondents preferred a revision application against the order granting recovery certificate before the Divisional Joint Registrar of Co-operative Societies. The revision application was filed in the year 2001. By the impugned judgment and order, the Divisional Joint Registrar has quashed the recovery certificate issued in favour of the petitioners.

4. The learned advocate for the petitioners has made various submissions regarding merits of the order dated 20th February 2002. He submitted that the revision application could not have been heard on merits as a separate application for condonation of delay preferred by the first and second respondents was not even decided by the revisional authority. He submitted that there was considerable delay in filing the revision application and without deciding the application

for condonation of delay, the revisional authority could not have entertained and decided the revision application. He submitted that the revision application was not maintainable on account of failure to comply with the requirements of sub section 2A of section 154 of the said Act of 1960. There are other submissions made by the advocate for the petitioners on merits of the order passed by the Divisional Joint Registrar.

5. The learned advocate for the first and second respondents supported the impugned order. However, he did not dispute that the application for condonation of delay was not decided by the revisional authority. He submitted that to the revision application filed by the first and second respondents, sub section 2A of section 154 of the said Act of 1960 will have no application.

6. I have considered the submissions. Admittedly, the revision application preferred by the first and second respondents was not filed within the stipulated period of limitation and, therefore, an application for condonation of delay was filed by the first and second respondents. The said application has not been

decided. Unless the delay was condoned, the revision application could not have been registered and entertained. Only on this ground, the impugned order will have to be quashed and set aside with a direction to the sixth respondent to decide the application for condonation of delay. Insofar as other issues raised by the petitioners are concerned including the issue regarding compliance with the compulsory deposit, the same will have to be dealt with only if the application for condonation of delay is allowed. Hence, I pass the following order.

7. ORDER :-

a) The impugned judgment and order dated 20th February 2002 passed by the sixth respondent is quashed and set aside;

b) The sixth respondent will hear and decide the application for condonation of delay filed by the first and second respondents. The revisional authority will proceed to entertain and decide the revision application on merits only if the first and second respondents make out a case for condonation of delay and the delay is condoned;

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c) All questions on merits of the recovery certificate as well as on the merits and the maintainability of the revision application are expressly kept open;

d) Writ Petition is partly allowed in the above terms. No order as to costs.

e) Parties and all concerned to act on an ordinary copy of this order duly authenticated by Registry of this Court.

(A.S.OKA, J.)